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FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING
OCT 5 2009
Stephan Harris, Clerk
Cheyenne

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

BEAR CREEK LAND &) No. 08-CV-202-J
10 CATTLE, LLC,)
11 PLAINTIFF,) DEFENDANT's 2nd AFFIDAVIT OF PREJUDICE
12) to recuse Judge A. Johnson, Beaman, for cause.
13)
14 vs.) Violations of 18 USC § 3, 4, 241, and 1341.
15)
16 Philip Andrew; Wolf,) MANDATORY JUDICIAL NOTICE and
17 Defendant.) Offer of Proof.

I. ISSUE.

1.1 COMES NOW, Defendant above named (hereinafter "Defendant"), all rights
12 reserved without express waiver of such, seeking the recusal of Judge Alan B. Johnson and
13 others similarly situated as those with knowledge of the nature of the Plaintiff's suit and
14 conduct as complained of in Defendant's September 30, 2009, 18 USC § 4 criminal complaint
15 to the F.B.I. attached hereto.

1.2 In said criminal complaint (hereinafter "complaint") Judge Alan B. Johnson has
13 been identified as a criminal sponsoring the criminal misconduct of U.S. magistrate William C.
14 Beaman who has recommended that Defendant be sanctioned for not discussing nonexistent
15 bonds, for not answering admissions to which this Court's order to compel did not address
16 itself, and for simply dreaming up facts while choosing, in *Sotomayorian* moments all their
own, to ignore other facts, while law percolates and estates are ruined; America's judges.

1 1.3 While the subject contract states that the Plaintiff will acquire the property by or
2 before closing date, and that the Defendant will then purchase the property from the Plaintiff,
3 Johnson and Beaman inject their gender and rich Latina heritage in place of inferior rulings and
4 faculties of white males, contriving all necessary facts for Plaintiff's victory; the Court is for
5 fraud. Inasmuch as all of this is mere felony theft and conspiracy, the Defendant requires
6 instruction about his 2nd Amendment rights to put it all to a halt as soon as possible. In addition,
7 the Defendant requires instruction as to whether placement of a lien on all property of one who
8 cannot refute with competent evidence the allegations made herein is unlawful. Defendant
believes that such conduct is lawful until such proof is on the record in this case.

9 1.4 The term "remedies" in the subject contract is being intentionally misread to mean
10 "compensation for loss of potential profit" which it is not; *remedy* is a means to preserve a right
11 or to be compensated, but it in and of itself is not more than a means. Watching Judge Johnson
12 sit idly by while false claims expressly prohibited under the subject contract in controversy
progress convinces the Defendant that he is corrupt.

13 1.5 The attached complaint is incorporated by this reference as if fully restated herein.
14 *Any and all emphasis* employed herein may be construed to have been added. All attachments
15 hereto are incorporated by this reference as if fully restated herein.

16 II. AUTHORITIES & APPEARANCE OF FAIRNESS.

17 2.1 Defendant truly desires that Judge Alan B. Johnson and Beaman assign this case to
18 another judge, not a magistrate, because of Johnson's willingness to allow, or failure to
19 identify, overtly fraudulent representations to be made to this Court.

20 *"I concur in the judgment of reversal solely on the ground that these contempt
21 convictions must be regarded as infected by the fact that the unprecedented long
22 sentence of 22 years which they carried was imposed by a judge who himself had
23 been the victim of petitioner's shockingly abusive conduct. That circumstance seems
24 to me to deprive the contempt proceeding of the appearance of evenhanded justice
which is at the core of due process. For this reason, I think the contempt convictions
must be set aside, leaving the State free to try the contempt specifications before
another judge or to proceed otherwise against this petitioner."*

25 *It is unfortunate that this Court's decision in Illinois v. Allen, 397 U.S. 337
26 (1970), was not on the books at the time the criminal case against this petitioner was
on trial. The courses which that decision lays open to trial judges for coping with*

outrageous courtroom tactics of the sort engaged in by this petitioner would doubtless have enabled Judge Fiok to deal with the petitioner in a manner that would have obviated the regrettable necessity for setting aside this contempt conviction.”

See *Mayberry v. Pennsylvania*, 400 US 455 (1970), MR. JUSTICE HARLAN, concurring.

2.2 A party claiming an appearance of fairness doctrine violation has the burden of showing it. *Lake Forest Part v. Hearing Board*, 76 Wn.App. 212, 217 (1994). This state's appearance of fairness doctrine is similar to the constitutional requirement of an unbiased tribunal mentioned above. But it goes farther than the impartiality requirement in that it not only requires an impartial decision maker to be fair, but requires the decision maker to also appear to be fair. See *Offutt v. US*, 348 U.S. 11, 14 (1954) ("[J]ustice must satisfy the appearance of justice"); *Medina v. California*, 505 US 437, 464 (1992)(Blackmun, dissent) ("In matters of ethics, appearance and reality often converge as one.).¹

2.3 Appearances of bias are damaging to the public's confidence in our legal system. *State v. Madry*, 8 Wn.App. 61, 70 (1972). The key question is how the proceeding appears to a reasonably prudent and disinterested person. *Brister v. Tacoma City Council*, 27 Wn. App. 474, 487, (1980); *Chicago, Minn., St. Paul & Pacific RR v. State Human Rights Comm'n*, 87 Wn.2d 802, 810 (1976); *Swift v. Island County*, 87 Wn.2d 348, 361 (1976).

2.4 Even when a possible conflict of interest or bias doesn't actually occur, but appears to occur, it is enough to trigger this doctrine. *Narrowsview-Preservation Ass'n v. Tacoma*, 84 Wn.2d 416, 420 (1974); *Buell v. Bremerton*, 80 Wn.2d 518, 523 (1972). Adjudicators must be "free of entangling influences." *Buell* at 523. And again, the mere possibility, rather than actuality, of a conflict of interest or bias is enough show a violation. *Id.* at 524.

¹ See also *Ex parte McCarthy*, [1924] 1 K.B. 256, 259 (1923) (“[J]ustice should not only be done, but should manifestly and undoubtedly be seen to be done”). I do not see how the appearance of fairness and neutrality can obtain if the bare possibility of a fair hearing is all that the law requires. Cf. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980) (noting the importance of “preserv[ing] both the appearance and reality of fairness,” which “generat[es] the feeling, so important to a popular government, that justice has been done”) (quoting *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 172 (1951) (Frankfurter, J., concurring)). *Litkey v. US*, 510 US 540, 565 (1994)); *Press-Enterprise Co. v. Superior Ct.*, 487 US 1, 9, 13 (1986); *Vasquez v. Hillery*, 474 US 254, 271 (1986); *Globe Newspaper Co. v. Superior Ct.*, 457 US 596, 606 (1982); *Richmond Newspapers, Inc. v. Virginia*, 448 US 555, 595 (1980); *Marshall v. Jerrico*, 446 US 238, 242 (1980); *Estes v. Texas*, 381 US 532, 543 (1965) (“A fair trial in a fair tribunal is a basic requirement of due process. Fairness, of course, requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. . . . [T]o perform its high function in the best way, “justice must satisfy the appearance of justice.” *Offutt v. US*, 348 U.S. 11, 14.”); *Kentucky v. Stincer*, 482 US 730, 751 (1987) (dissent); *Greenholtz v. Inmates of Nebraska Penal Complex*, 442 US 1 (1979) (dissent).

2.5 Presiding officer's failure to recuse when obliged to do so violates cannons of judicial conduct. (See *In re Scott*, 52 Cal.3d 968 (1991), 277 Cal.Rptr. 201, 802 P.2d 985, 91 CDOS 450, 91 Daily Journal DAR 700).

2.6 The appearance of fairness is lost through Defendant's having complained as detailed above. The Defendant demands that Judge Alan B. Johnson and U.S. magistrate Beaman recuse themselves from this case as presiding trier of fact.

III. CONCLUSION & VERIFICATION.

3.1 I, Philip Andrew; Wolf, do hereby declare under penalties of perjury (28 USC § 1746) that the foregoing statements are true and correct, and that all exhibits attached hereto are true and correct to the best of my knowledge and belief. Executed this 20⁷ day of September, 2009

Philip Andrew, Wolf, Affiant

3.2 The above affirmation was subscribed and duly sworn to before me this 30th day of September, 2009, by Philip Andrew Wolf.

3.3 I, John J. Nauert, am a Notary under license from the State of Colorado whose Commission expires on 6-2011, and be it known by my hand and my Seal as follows:

Notary signature *My Commission Expires 01/02/2011*

Dated: 4/30/09

Presented by

Philip Andrew, W
P.O. Box 16804
Golden, CO 80402

CERTIFICATE OF SERVICE: I, Philip Wolf, do hereby certify that I did deposit in U.S. Post First Class and in adequate packaging two copies of the attached documents (Philip Andrew; Wolf's Affidavit of Prejudice w/felony complaint under 18 USC §4) addressed to the following parties: Brett F. King, 610 West Broadway #201, P.O. Box 40, Jackson, WY 83001. I am a Citizen of the United States. I am over 18 years of age, and I am not party to this action.

DEFENDANT'S AFFIDAVIT OF PREJUDICE
to recuse Judge Alan B. Johnson, other.